

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION - BAY CITY**

In re:

COMMUNITY MEMORIAL HOSPITAL
dba CHEBOYGAN MEMORIAL HOSPITAL,
Debtor.

Case No. 12-20666
Chapter 11
Honorable Daniel S. Opperman

/

**LIQUIDATING TRUSTEE'S MOTION FOR AUTHORITY TO
ABANDON REAL PROPERTY PURSUANT TO 11 U.S.C. §554**

A. Brooks Darling, Liquidating Trustee (“Liquidating Trustee”), in accordance with Fed. R. Bankr. P. 6007 and E.D. Mich. LBR 9014-1, moves the Court for authority to abandon real property pursuant to 11 U.S.C. §554. In support of same, the Liquidating Trustee states as follows:

1. This Court has jurisdiction to decide this motion pursuant to 28 U.S.C. §§ 157 & 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue properly lies with this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Debtor filed a voluntary petition for relief pursuant to Chapter 11 of the Bankruptcy Code on March 1, 2012.

3. This Court confirmed the Plan of Liquidation proposed by the Creditors' Committee pursuant to an order dated August 7, 2013 (Docket No. 799) which established the CMH Liquidating Trust to administer remaining assets. A. Brooks Darling is the duly appointed Liquidating Trustee.

4. Property of the Liquidating Trust includes a vacant lot with dimensions of approximately 109 feet by 90 feet, located on the southwest corner of W. Lincoln Avenue and S. Huron Street, commonly known as 700 S. Huron St. It is located in the City of Cheboygan, County of Cheboygan, Michigan, and is further described as follows:

Lot 13, Block 1, Supervisor John P. Galbraith's Second Addition to the City of Cheboygan, according to the plat thereof as recorded in Liber 2 of Plats, Page 153, Cheboygan County Records.

Parcel No. 055-G17-001-012-00.

5. Upon information and belief, the lot is not subject to any liens, encumbrances or other interests.

6. The lot is listed on the Debtor's Schedule A with a value of \$15,000. However, based upon consultation with his realtor, the Trustee listed the property for sale with Berkshire Hathaway Home Services for \$5,000 and no offers were received. In addition to listing the property for sale, adjacent landowners and nearby businesses were contacted, but no offers to purchase the lot were made.

7. The parcel is listed with the City of Cheboygan as having an assessed value of \$0 due to the debtor hospital being a non-profit organization which was exempt from payment of property taxes.

8. Because no taxes are assessed on the property, the Trustee has continued to attempt to sell it. However, there are other costs associated with the property including liability insurance premiums at \$525 per year and grass mowing at \$300 to \$400 per year. The grass mowing is required by the City of Cheboygan pursuant to ordinance.

9. The City of Cheboygan Tax Assessor and Treasurer are being provided with notice of this Motion.

10. The lot is both burdensome and of inconsequential value to the estate since the ongoing costs of mowing and insurance have exceeded the value of the property.

11. Pursuant to 11 U.S.C. 554(a), the Trustee may abandon any property that is "burdensome to the estate" or that is of "inconsequential value and benefit to the estate".

12. Pursuant to the Plan of Liquidation and the Liquidating Trust Agreement, the Liquidating Trustee has the authority to dispose of the trust assets.

13. The Liquidating Trustee believes that abandonment of the lot is in the best interests of the Liquidating Trust and creditors.

WHEREFORE, the Liquidating Trustee respectfully requests of this Court to enter the proposed order attached as Exhibit 1 approving the Liquidating Trustee's abandonment of the real property.

Date: July 27, 2018

/s/ A. Brooks Darling

A. Brooks Darling (P26419)
Liquidating Trustee
412 S. Union St.
Traverse City, MI
(231) 947-8500
abd darling@abd lawtc.com

Exhibit 1 – Proposed Order

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION - BAY CITY**

In re:

Community Memorial Hospital
dba Cheboygan Memorial Hospital,
Debtor.

Case No. 12-20666
Chapter 11
Honorable Daniel S. Opperman

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION
TO ABANDON REAL PROPERTY PURSUANT TO 11 U.S.C. §554**

This matter having come before the Court on the Motion of the Liquidating Trustee, A. Brooks Darling, for authority to abandon real property, no objections having been filed, and the Court being fully advised in the premises,

IT IS ORDERED that the *Liquidating Trustee's Motion for Authority to Abandon Real Property Pursuant to 11 U.S.C. §554* is approved.

IT IS FURTHER ORDERED that the pursuant to 11 U.S.C §554(a), the Liquidating Trustee's interest in the following real property is abandoned immediately upon the entry of this Order:

Located in the City of Cheboygan, County of Cheboygan, Michigan. Lot 13, Block 1, Supervisor John P. Galbraith's Second Addition to the City of Cheboygan, according to the plat thereof as recorded in Liber 2 of Plats, Page 153, Cheboygan County Records.

Parcel No. 055-G17-001-012-00.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
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In re:

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**NOTICE OF LIQUIDATING TRUSTEE'S MOTION FOR AUTHORITY TO ABANDON
REAL PROPERTY PURSUANT TO 11 U.S.C. §554**

The Liquidating Trustee, A. Brooks Darling, has filed a motion with the Court for authority to abandon real property pursuant to 11 U.S.C. §554.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the requested relief, or if you would like the court to consider your views on this motion, **within 14 days**, you or your attorney must:

- a. File with the Court a written response or an answer explaining your position at:

United States Bankruptcy Court
111 First Street
Bay City, MI 48708

If you mail a response to the Court for filing, you must mail it early enough so the court will receive it on or before the date stated above. All attorneys are required to file pleadings electronically. You must also mail a copy to A. Brooks Darling at the address below.

- b. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time, and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: July 27, 2018

/s/ A. Brooks Darling
A. Brooks Darling (P26419)
412 S. Union
Traverse City, MI 49684
(231) 947-8500
abd darling@abd lawtc.com

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION - BAY CITY**

In re:

COMMUNITY MEMORIAL HOSPITAL
dba CHEBOYGAN MEMORIAL HOSPITAL,
Debtor.

Case No. 12-20666
Chapter 11
Honorable Daniel S. Opperman

/

**BRIEF IN SUPPORT OF LIQUIDATING TRUSTEE'S MOTION FOR AUTHORITY
TO ABANDON REAL PROPERTY PURSUANT TO 11 U.S.C. §554**

A. Brooks Darling, Liquidating Trustee (“Liquidating Trustee”), files this brief in support of his *Liquidating Trustee's Motion for Authority to Abandon Real Property Pursuant to 11 U.S.C. §554* in accordance with E.D. Mich. LBR 9014-1(f)(2).

In support of said Motion, the Liquidating Trustee relies on and incorporates by reference the statements of fact and the authorities cited in the Motion.

Pursuant to 11 U.S.C. §554(a), the Trustee may abandon any property that is “burdensome to the estate” or that is of “inconsequential value and benefit to the estate”. The lot to be abandoned is located between residences and a strip mall and does not lend itself to any particular use. The fact that it has not sold for \$5,000 suggests it is worth even less than that amount, and the ongoing costs of mowing and insurance have actually exceeded the value of the property. The lot is both burdensome and of inconsequential value to the liquidating trust.

“The Trustee’s power to abandon property is discretionary and the Court will generally defer to the Trustee’s judgment in determining whether to abandon a property.” *In re Syntax-Brillian Corporation*, Debtors, No. 08-11407 (KJC), 2018 WL 3491758, at 15 (Bankr. D. Del. July 18, 2018), quoting *In re Moore*, No. 15-10174, 2015 WL 5674430, at 9 (Bankr. D.N.J. Sept. 25, 2015). To confirm a proposed abandonment, the court needs only to find that the trustee made “(1) a business judgment; (2) in good faith; (3) upon some reasonable basis; and (4) within the trustee’s scope of

authority.” *Syntax-Brillian Corporation*, quoting *In re Slack*, 290 B.R. 282, 284 (Bankr. D.N.J. 2003) aff’d 112 Fed. Appx. 868 (3d Cir. 2004)).

The Liquidating Trustee respectfully requests of this Court to enter the proposed order attached as Exhibit 1 to the Motion, approving the Liquidating Trustee’s abandonment of the real property.

Date: July 27, 2018

/s/ A. Brooks Darling
A. Brooks Darling (P26419)
Liquidating Trustee
412 S. Union St.
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(231) 947-8500
abdarling@abdlawtc.com

Exhibit 4 – Proof of Service

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION - BAY CITY**

In re:

Community Memorial Hospital
dba Cheboygan Memorial Hospital,
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/

CERTIFICATE OF SERVICE

I, Susan P. VanKersen, certify that on July 27, 2018, the following documents were served:

**LIQUIDATING TRUSTEE'S MOTION FOR AUTHORITY TO
ABANDON REAL PROPERTY PURSUANT TO 11 U.S.C. §554**

**NOTICE OF LIQUIDATING TRUSTEE'S MOTION FOR AUTHORITY TO
ABANDON REAL PROPERTY PURSUANT TO 11 U.S.C. §554**

upon all persons registered to receive notice by the CMF/ECF electronic filing system.

I further certify that on July 27, 2018, I served said documents via First Class Mail upon the following persons and entities, as well as to all parties on the attached special service list, by mailing same bearing addresses, with postage fully pre-paid, and depositing in the United States Post Office, Traverse City, Michigan, 49684:

Tom Eustice Cheboygan City Assessor 403 N. Huron Street Cheboygan, MI 49721	Bridget Brown Cheboygan City Clerk and Treasurer 403 N. Huron Street Cheboygan, MI 49721	Stephen E. Lindsay Lindsay & Lindsay, LLP 220 South Main St., PO Box 267 Cheboygan, MI 49721
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Date: July 27, 2018

/s/ Susan P. VanKersen

Susan P. VanKersen
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(231) 947-7900

Internal Revenue Service
P.O. Box 145500
Cincinnati, OH 45250-5500

State of Michigan
P.O. Box 30437
Lansing, MI 48909

Shelly Fuller
United States Dept of Agriculture
1501 Cass Street, Suite A
Traverse City, MI 49684

State of Michigan UIA Tax Collection
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Detroit, MI 48909-8157

State of Michigan Treasury
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Detroit, MI 48277-0003

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